

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
:
UNITED STATES OF AMERICA, :
:
Plaintiff, : **ORDER**
:
- against - : 19-cr-576 (BMC)
:
GENARO GARCIA LUNA, :
:
Defendant. :
:
----- X

COGAN, District Judge.

Defendant's motion *in limine* [185] to preclude Martinez Sanchez from testifying about statements made by alleged co-conspirators is granted. The Government has not satisfied the elements of the co-conspirator hearsay exclusion concerning an uncharged conspiracy. For this testimony to be admissible under Rule 801(d)(2)(E), the Government would have to prove, by a "preponderance of the evidence[,"] that a conspiracy existed, that the defendant and declarant were members, and that the statements were made during the course of and in furtherance of the conspiracy." United States v. Wedd, 993 F.3d 104, 117 (2d Cir. 2021). The statements at issue are from 1993 or 1994 and 2000 or possibly 2001. The conspiracy charged in the superseding indictment begins in 2001. The Government has not made a *prima facie* showing of some other conspiracy that involved defendant and these declarants, see United States v. Geaney, 417 F.2d 1116, 1120 (2d Cir. 1969), and, frankly, if it wanted to do so just for the purpose of getting in these statements, the Court would prohibit it as a sideshow and waste of time.

Considering we don't know Jorge or Anselmo's full names, or whether these are even their real names, the Court is not going to allow the jury to hear what amounts to a rumor of

defendant's guilt.

SO ORDERED.

U.S.D.J.

Dated: Brooklyn, New York
January 24, 2023